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Materials for
CITIZENSHIP, IMMIGRATION AND GLOBALIZATION
LAW262H1S; GLAO211H; Spring 2012

SPRING 2012

VOLUME I

Professor Ayelet Shachar
Faculty of Law
University of Toronto

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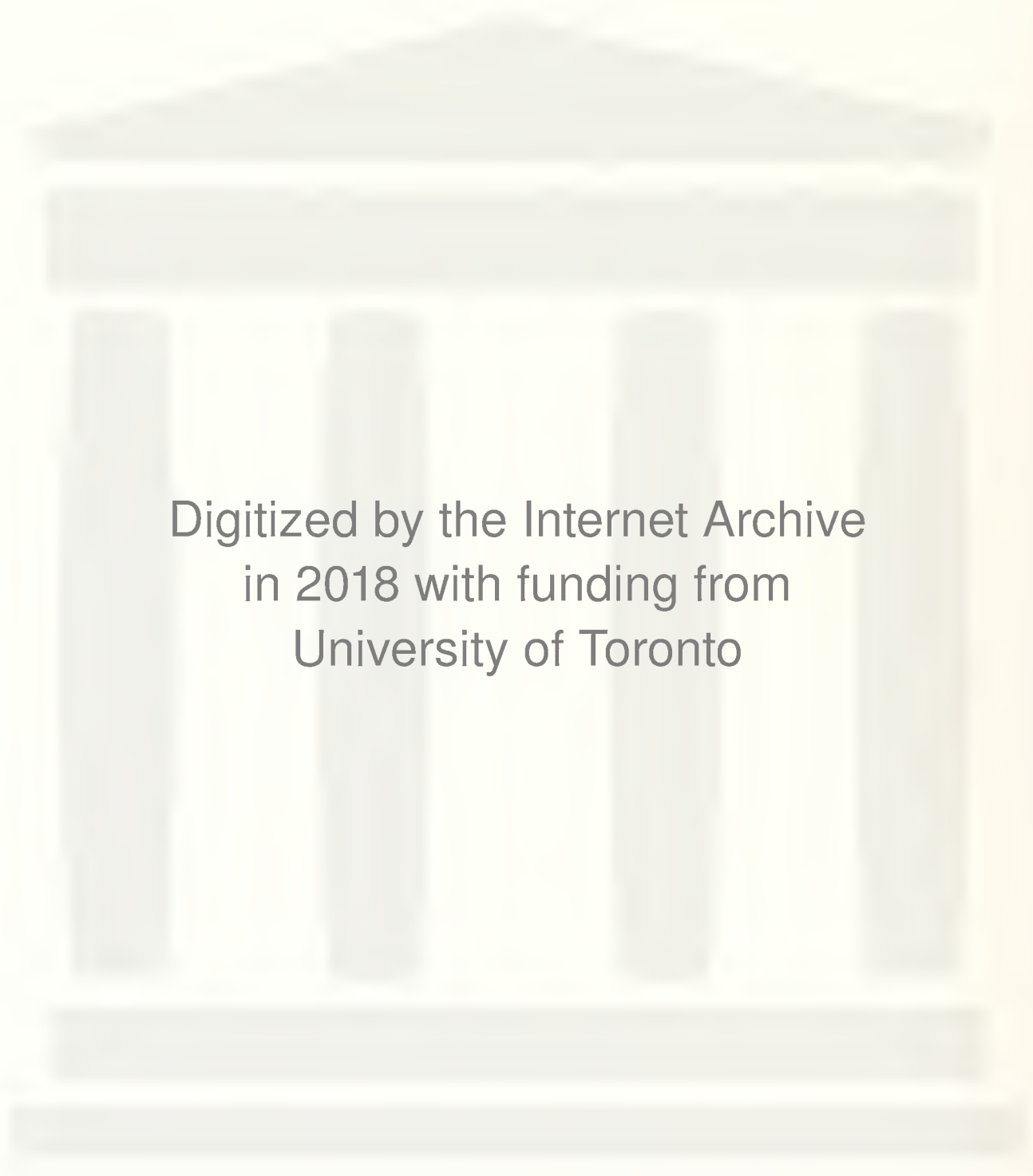
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CITIZENSHIP, IMMIGRATION AND GLOBALIZATION

LAW262H1S; GLAO211H; Spring 2012

Perspective/ICT/SUYRP course

PROFESSOR AYELET SHACHAR

Class Meeting Time: Monday 2:10-4:00

Office Hours (FL 408): Monday 4:00-4:30 or by appointment

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Citizenship and immigration have become a hot-button political issue in recent years in Canada, as well as in many other destination countries. Debates range from admission questions – who should be allowed to enter, according to what criteria, and for how long – to queries about the civil rights of migrants, cultural diversity, and the level of integration that can legitimately be expected from newcomers once they have settled in the country. Another emerging topic is the growing impact of economic remittances, transnational investments, and political contributions by dual citizens in both sending and receiving countries. This course will explore these new developments, placing them in the broader context of Canadian immigration law, history, and policy. We will also refer to comparative evidence from the United States, Australia, France, Germany, Ireland, Italy, the United Kingdom, and Singapore, as well as examine the changing conceptions of membership in leading emigrant-sending countries, including Mexico, India, and China. With this global perspective in mind, we will chart the new terrain for Canadian citizenship and immigration law for the twenty-first century.

EVALUATION

- **Class participation (15%)**: Class meetings will be organized around a discussion of each week's readings. Class participation includes attendance, substantive participation in weekly discussions, and one in-class presentation of a comment paper (see below).
- **1,250 words (five-page) comment paper (15%)**: The comment paper will be a critical assessment of one or more of the sources on the reading list. Comment papers are due at 4 p.m. on the day before the class readings are scheduled to be discussed. Please e-mail the comment paper to ayelet.shachar@utoronto.ca. Each student is expected to use the five-page comment paper to illuminate an important question in the reading or to develop their own coherent argument based on the readings. The submission of the comment paper will be accompanied by a short in-class presentation of the paper. Students must sign up for the oral presentation of one of their comment papers ahead of time, during the second meeting of the seminar.
- **Final research paper of 6,000-6,500 words (approx. 20 to 25 pages) (70%)**: The final paper's topic must be pre-approved by the instructor. A one-page outline of your paper and a preliminary bibliography must be turned in by 2:00 p.m., Monday, February 27, 2012. The final paper is due by 10 a.m. on the last day of the reading period, April 25, 2012 (Records Office).

READING MATERIALS

- The reading materials will draw upon Canadian and comparative jurisprudence and legislation governing citizenship and immigration law, as well as contemporary political theory, globalization studies, and social science literature. The reading material is assembled in a course packet, *Citizenship, Immigration and Globalization*, edited by Professor Shachar (Faculty of Law, University of Toronto, 2012). The course packet is available for purchase at the bookstore in the basement of the Law School. Additional copies will be placed on short-term reserve at the Bora Laskin Law Library. Course materials will also be posted on Blackboard.

I. FOUNDATIONS

1. The Classic Model of Sovereignty and the Challenges of Migration in the 21st Century

- "Citizenship," in *Immigration and Citizenship: Process and Policy*, ed. Thomas Alexander Aleinikoff et al. (5th ed., West, 2003), p. 1 1
- "Methodological Preliminaries" in Lea Ypi, "Justice in Migration: A Closed Borders Utopia?" 2
16 *Journal of Political Philosophy* (2008), pp. 392-393
- "Migration at a Glance," in *Report of the Global Commission on International Migration* (GCIM, 2005); available at www.gcim.org/en/finalreport 4

2. Membership's Boundaries and the Shifting Borders of Immigration

- Rogers Brubaker, "Citizenship as Social Closure," in *Citizenship and Nationhood in France and Germany* (Harvard University Press, 1992), pp. 21-34 7
- "Who are the *Harraga*?" in Branko Milanovic, *The Have and the Have-Not* (Basic Books, 2011), pp. 130-134 21
- Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (Columbia University Press, 1996), pp. 1-6; 59-75 24
- Ayelet Shachar, "The Shifting Border of Immigration Regulation," 3 *Stanford Journal of Civil Rights and Civil Liberties* (2007), pp. 165-193 48
- Bruce Ackerman, *Social Justice in the Liberal State* (Yale University Press, 1980), pp. 93-95 78
- Gary S. Becker, "An Open Door for Immigrants – The Auction" *Wall Street Journal*, October 14, 1992, A14 81

II. WHO BELONGS? CITIZENSHIP AND IMMIGRATION LAW IN A NUTSHELL

3. *Who “Naturally” Belongs to the Political Community – and on What Basis?*

Brian Seaman, “The ‘lost Canadians’; Feature report on Citizenship,” <i>LawNow</i> , July 1, 2008	83
Mario Bellissimo, “Bill C-37: The tale of lost and found Canadians,” <i>Inside Immigration</i> , CBA, April 2010	87
Ayelet Shachar, “Children of A Lesser State: Sustaining Global Inequality through Citizenship Laws,” in <i>NOMOS: Child, Family, and State</i> , ed. Stephen Macedo and Iris Marrion Young (NYU Press, 2003), pp. 345-395	94
Fourteenth Amendment, U.S. Constitution	
<i>Romans v. Canada</i> , Communication No. 1040/2001, CCPR/C/81/D/1040/2001 (2004)	144
<i>Re Ortiz-Martinez</i> , Board of Immigration Appeals, File No. A-27-645-795, May 25, 2007	151
Twenty-Seventh Amendment of the Constitution Act 2004 [Ireland]	156

4. *Family-Sponsored Immigration Categories – Who is Family?*

“Family Class - Canada” in Emily Carasco et. al., <i>Immigration and Refugee Law: Cases, Materials, and Commentary</i> (Emond Montgomery, 2007), pp. 369-382	158
“New Rules of Engagement Proposed for Marriages Involving Migrants,” <i>The Canadian Press</i> , March 29, 2011	166
Richard Fausset, “Binational Gay Couples in Immigration Bind” <i>Los Angeles Times</i> , July 10, 2006	168
“LGBT Organizations Urge Obama to Stop Deporting LGBT Spouses,” GetEQUAL Press Release, May 5, 2011	171
Kirk Semple, “U.S. drops deportation proceedings against immigrant in same-sex marriage,” <i>New York Times</i> , July 1, 2011	174
<i>National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs</i> , C.C.T. 10/99 [South Africa]	176

C 130/02 <i>Zambrano</i> , Official Journal of the European Union, 30.4.2011	179
Anja Wiesbrock, "The <i>Zambrano</i> Case: Relying on Union Citizenship Rights in 'Internal Situations,'" <i>EUDO Citizenship Observatory</i> (EUI, March 2011)	180
 5. Employment-Based Immigration: Point System for the Highly Skilled	
Citizenship and Immigration Canada, "Skilled Workers and Professionals: Who Can Apply" (CIC, 2011; http://www.cic.gc.ca/english/immigrate/skilled/apply-who.asp)	183
Ayelet Shachar, "The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes" 81 <i>NYU Law Review</i> 148 (2006)	185
Canadian Council for Refugees, "Canadian Immigration: Changing Priorities" (April 2011)	238
Demetrios G. Papademetriou and Madeleine Sumption, "Rethinking Point Systems and Employer-Selected Immigration," Migration Policy Institute, June 2011	241
"Letter to The Times: Nobel Prize-Winners in Science have been Enriching and Enhancing British Science and Society for Decades," October 7, 2010	255
Yudhijit Bhattacharjee, "US Immigration: Groups Urge Easing of Restrictions on Visa Policies Affecting Scientists," 304 <i>Science</i> 943 (2004)	256
Statement and Recommendations on Visa Problems Harming America's Scientific, Economic, and Security Interests, written by leaders of the academic community	257
Brenda S. A. Yeoh, "Bifurcated Labor: The Unequal Incorporation of Transmigrants in Singapore" 97 <i>Tijdschrift voor Economische en Sociale Geografie</i> (2006), 26-37	262
 6. Temporary Admission Categories; the Migration-Development Nexus; Domestic Workers; Undocumented Migrants; Earned Citizenship	
Citizenship and Immigration Canada, <i>News Release: Canada Welcomes Highest Number of legal immigrants in 50 years while taking action to maintain the integrity of the immigration system</i> , February 13, 2011	274
Martin Ruhs, "The Potential of Temporary Migration Programmes in Future International Migration Policy: in <i>Global Commission on International Migration</i> (GCIM, 2005)	276
Michael Walzer, <i>Spheres of Justice: A Defense of Pluralism and Equality</i> (Basic Books, 1983), pp. 52-61	305

Ottonelli, Valeria and Tiziana Torresi, "Inclusivist Egalitarian Liberalism and Temporary Migration: A Dilemma," <i>The Journal of Political Philosophy</i> (forthcoming), pp. 1-4, 6-10, 17-20	313
Jennifer Gordon, "Transnational Labor Citizenship," 80 <i>Southern California Law Review</i> 502 (2007), pp. 503-510	326
ILO, "Convention Concerning Decent Work for Domestic Workers" 15A, International Labour Organization, 2011	334
Dilip Ratha, "Leveraging Remittances for Development," <i>Migration Policy Institute</i> , June 2007	344
Steve Bills, "RBC Offering Immigrants Phone-Bank Translating," <i>The American Banker</i> , August 26, 2008	359
Xi Yu, "Faust, Balderas Thank Senator for Sponsoring DREAM Act," <i>Harvard Crimson</i> , September 15, 2010	361
Roberto Gonzales, "Wasted Talent and Broken Dreams: The Lost Potential of Undocumented Students," in <i>Immigration Policy in Focus</i> (2007), pp. 1-11	362
"My Life as an Illegal," <i>Texas Monthly</i> , July 2006	374
Ayelet Shachar, "Earned Citizenship: Property Lessons for Immigration Reform," 23 <i>Yale Journal of Law & the Humanities</i> 110 (2011), pp. 110-158	380

7. Asylum Seekers, Forced Migration & Movie Screening "Well-Founded Fear"

UNHRC, "Safeguarding Asylum," in <i>The State of the World's Refugees 2006: Human Displacement in the New Millennium</i> (Oxford University Press, 2006) pp. 31-61	430
Deborah E. Anker, "Refugee Law, Gender, and the Human Rights Paradigm," 15 <i>Harvard Human Rights Journal</i> (2002), pp. 133-154	464

Professor Shachar will offer introductory comments before the movie, which will be shown in class during our regular meeting time.

III. THE NEW FRONTIERS OF CITIZENSHIP AND IMMIGRATION

8. *Shared Values; State and Religion; Return of Assimilation?*

"France/Secularism," Statement of President Jacques Chirac, France, January 28, 2004	486
Rogers Brubaker, "The Return of Assimilation? Changing Perspectives on Immigration and Its Sequels in France, Germany, and the United States," 24 <i>Ethnic and Racial Studies</i> 531 (2001)	487
John Tyler, "Asylum in Holland: Only for Teenage Girls?" RNW, April 28, 2011	505
Graeme Hamilton, "Quebec Demands Immigrants Sign-Off on 'Shared Values'," <i>National Post</i> , October 29, 2008	507
Bill 94, "Proposed Bill and Explanatory Notes," National Assembly, Quebec, 2010	510
Beverley Baines, "Bill 94: Quebec's Niqab Ban and Sex Equality," <i>The Women's Court of Canada</i> , May 12, 2010	515
<i>R. v. N.S.</i> , 2010 ONCA 670	521
<i>Alberta v. Hutterian Brethren of Wilson Colony</i> , 2009 SCC 37	522
Ayelet Shachar, "Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies," 50 <i>McGill Law Journal</i> (2005), pp. 78-88	534

9. *Citizenship Tests in Public Law and the Rise of Privatized Diversity*

Amitai Etzioni, "Citizenship Tests: A Comparative, Communitarian Perspective," 78 <i>Political Quarterly</i> 353 (2007)	546
Oded Lowenheim and Orit Gazit, "Power and Examination: A Critique of Citizenship Tests," 40 <i>Security Dialogue</i> 145 (2009)	557
Liav Orgad, "Illiberal Liberalism: Cultural Restrictions on Migration and Access to Citizenship in Europe," 58 <i>American Journal of Comparative Law</i> (2010), pp. 53-83	572
Randall Hansen, "Citizenship Tests: An Unapologetic Defence," How Liberal are Citizenship Tests? <i>EUDO Citizenship Forum</i> (EUI, 2010)	603
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Canadian Council of Muslim Women, <i>Position Statement on the Proposed Implementation of Section of Muslim Law [Sharia] in Canada</i> (2004)	612
Ministry of the Attorney General, <i>Background: The Family Statute Law Amendment Act</i> (2005)	617
Family Arbitration, Ontario Regulation 134/07 (2007)	619
David Pearl and Werner Menski, "Informal Muslim Dispute Settlement Processes," in <i>Muslim Family Law</i> (Sweet and Maxwell, 1998), pp. 77-80	623

10. Naturalization, Dual Citizenship, and Transnationalism: Membership Beyond the Territory

Nicole Guimezanes, "The Current Status of Nationality Law," in <i>Naturalization: A Passport for the Better Integration of Immigrants</i> (OECD, 2011), pp. 65-74	626
Marc Howard, "Variation in Dual Citizenship Policies in the Countries of the EU," 39 <i>International Migration Review</i> (2006), pp. 697-704	658
Sam Dillon, "Mexico Woos U.S. Mexicans, Proposing Dual Nationality," <i>New York Times</i> , December 10, 1995, A16	667
Peter Spiro, "Dual Nationality: Unobjectionable and Unstoppable" <i>Center for Immigration Studies</i> (2000)	669
Claudio Lopez-Guerra, "Should Expatriates Vote?" 13 <i>Journal of Political Philosophy</i> 216 (2005)	677
Kim Barry, "Home and Away: The Construction of Citizenship in an Emigration Context," 81 <i>NYU Law Review</i> (2006), pp. 11-59	696
Italy's "Overseas Constituency," Provisions Governing the Right to Vote of Italian Citizens Abroad, Law No. 459, Dec. 27, 2001, Gazz. Uff. No. 4, Jan. 5, 2002 [Italy]	746

11. Regional or Postnational Citizenship; Where Europe and North America Diverge?

Article 20, "Citizenship of the Union," Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), Official Journal of the European Union, C115/56, 9.5.2008	748
Christian Joppke, "The Inevitable Lightning of Citizenship," 51 <i>Archives Europeennes de Sociologies</i> 9 (2010)	751

Vincent Chetail and Celine Bauloz, "The European Union and the Challenge of Forced Migration: From Economic Crisis to Protection Crisis?" (EUI, 2011) 775

Peter Andreas, "A Tale of Two Borders: The U.S.-Canada and U.S.-Mexico Lines after 9-11," *Center for Comparative Immigration Studies*, May 2003 813

Government of Canada, "A Declaration by the Prime Minister of Canada and the President of the United States" & "Key Areas of Cooperation" in *Beyond the Border: A shared vision for perimeter security and economic competitiveness* (<http://www.borderactionplan-plandactionfrontalier.gc.ca/psec-scep/declaration-declaration.aspx?lang=eng>) 828

Emily Gilbert, "The North American Security Perimeter should be an Election Issue," *rabble.ca*, April 6, 2011 833

12. The Future of Citizenship in a Globalizing World: Strangers No More?

Alison Brysk and Gershon Shafir, "Globalizing Citizenship?" in *People Out of Place: Globalization, Human Rights, and the Citizenship Gap* (Routledge, 2004), pp. 209-215 836

Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press, 2009), pp. 1-18 845

